JD-23-09
Walled Lake, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MCCARTHY CONSTRUCTION COMPANY

and

Cases 7-CA-51474
7-CA-51647

CEMENT MASONS LOCAL 1,
INTERNATIONAL UNION OF BRICKLAYERS
AND ALLIED CRAFTWORKERS (BAC), AFL-CIO

Richard F. Czubaj, Esq., for the General Counsel.
Dennis M. Devaney and Jeffrey D. Wilson, Esqs., (Strobl & Sharp, P.C.), Bloomfield Hills, Michigan, for the Respondent.
John R. Canzano, Esq., (Klimist, McKnight, Sale, McClow and Canzano, P.C.), Southfield, Michigan, for the Charging Party.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan, on March 18-19, 2009. The Union, Cement Masons Local 1 (BAC), filed the initial charges on August 29, 2008 and November 21, 2008 respectively. The General Counsel issued a complaint on October 22, 2008 and amended complaints on January 29, and March 2, 2009.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, Respondent and Charging Party, I make the following

Findings of Fact

I. Jurisdiction

Respondent, McCarthy Construction Company, a corporation, is a general contractor in the construction industry. Its principal place of business is in Walled Lake, Michigan, where in 2008 it derived gross revenues in excess of $1,000,000 and provided services valued in excess of $50,000 for Skanska USA and other enterprises within the State of Michigan, each of which is directly engaged in interstate commerce. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Pursuant to Section 9(a) of the Act, the Union was certified as the exclusive representative of all Respondent's full-time and regular part-time employees working on building

and construction projects on March 26, 2008. The General Counsel alleges that Respondent has violated Sections 8(a)(5) and (1) of the Act by failing and refusing to bargain in good faith with the Union. Specifically, the General Counsel alleges that:

Respondent has violated the Act by cancelling bargaining sessions without just cause and without offering alternative dates since October 6, 2008;

Respondent violated the Act by refusing to provide the Union with information it requested orally and in writing about the ownership, control and current operations of Kensington Construction Company, which is owned by a McCarthy employee;

Respondent violated the Act in providing the Union information it requested in a dilatory manner between August 8, and September 17, 2008.

Chronology

March 26, 2008: the NLRB certifies the Union pursuant to section 9(a) of the Act as the exclusive bargaining representative of all of Respondent's full-time and regular part-time employees working on building and construction projects at and out of its facility located at 1033 Rig Street, Walled Lake, Michigan.

April 9, 2008, the parties' first bargaining session is scheduled. It is then rescheduled for April 15, 2008 at Respondent's request.

April 15, 2008: The parties hold their first bargaining session.

April 29, 2008: Respondent cancelled a bargaining session scheduled for this date because the Union did not have a sample collective bargaining agreement available for it.

May 13, 2008: Respondent cancelled a scheduled bargaining session because it was in the process of interviewing law firms to represent it in negotiations with the Union.

June 17, 2008: The Union faxed Respondent a letter suggesting 10 dates for bargaining between June 19 and July 14. It also requested that Respondent furnish to the Union payroll records, employment records and other documents showing the name, address, last day worked, notice of layoffs, date of hire, rate of pay, benefits and hours of work for all Respondent's employees working on construction and building projects since January 1, 2008.

Additionally, the Union requested a list of each job on which Respondent was working or had been awarded, with a description of the work and the scheduled or estimated start time.

June 25, 2008: Respondent retains attorney Dennis Devaney to represent it in bargaining with the Union.

June 27: Devaney wrote the Union suggesting July 16 or 17, as the next bargaining date.

July 17: The Union cancels a bargaining session scheduled for this date.

July 31: The parties hold their second bargaining session. The Union had previously sent Respondent a proposed collective bargaining agreement. The Union proposal was apparently a standard contract presented to many union contractors. Respondent presented

the Union with a counter proposal on July 31, after which the meeting ended. During the meeting Respondent's attorney, Devaney, informed the Union that he would provide it with compact discs (CDs) with the information requested by it on June 17.

August 8: Devaney transmits CD Rom copies of Respondent's payroll records for the first and second quarters of 2008.

August 20: Chuck Kukawka, Financial Secretary and Treasurer of the Union, informed Devaney that he had trouble accessing the files on the CDs and that when the Union reviewed the CDs, it found that it contained only the name, rate of pay and hours worked for the employees listed. The CDs did not contain the following information the Union requested on June 17: the addresses of employees, last day worked, layoff notices, date of hire and benefits. Furthermore, Respondent did not provide any information regarding jobs awarded to it or underway.

August 22: Devaney replied to Kukawka. He suggested that the Union should have asked Respondent for assistance if it was having difficulty accessing the files on the CD. He provided additional information that the Union requested on June 17, but not: the last day worked, date of hire, benefits and list of current jobs. Devaney notified the Union that he would be out of town from August 29-September 8, and asked the Union to suggest additional bargaining dates beginning the week of September 15.

August 29: The Union filed an unfair labor practice charge alleging that Respondent had failed and refused to provide it with the information requested.

September 10: The Union proposes September 15, 18, 19, 22 and 26 for bargaining sessions.[1]

September 15: Devaney schedules a bargaining session for September 26.

September 16: Respondent provided a comprehensive response to the Union's June 17 information request, GC Exh. 9. It provided the last day worked for two employees, the dates of hire for ten others, a description of benefits provided to two of its employees and list of 11 current jobs. With regard to some of these jobs, Respondent provided an estimate of the remaining amount of its work and with respect to all eleven, it provided an estimated start date.

September 26: The parties hold their third bargaining session. They discuss health insurance at the bargaining session. The Union informed Respondent that it would not accept the company's counterproposal.

October 6: Devaney cancelled a bargaining session one hour before it is scheduled to commence due to the illness of the children of Respondent's Vice-President, Denise McCarthy.

October 14: The Union amends its unfair labor practice charge alleging that Respondent delayed providing it with the information it requested until September 2008.

October 21: The parties held their fourth bargaining session. The parties discussed health insurance and other fringe benefits. Respondent asked the Union for the plan documents for the Union's health insurance plan.

[1] The Union did not suggest any bargaining meetings between July 31 and September 15.

The Union asked Respondent for certified payroll records from its prevailing wage projects. It also requested a list of jobs on which McCarthy had bid or was planning to bid and records of Kensington Construction Company.[2] Kensington is owned by Eric Teichner, the former son-in-law of Respondent's President, Michael McCarthy. Teichner is also employed by Respondent as a foreman. Devaney responded to the Union by stating that he would have to discuss this with Michael McCarthy and get back to the Union. Denise McCarthy told the Union that she believed that Kensington was inactive.

October 22: The General Counsel issues a Complaint predicated on the Union's amended charge. The Union provides Respondent information regarding its health insurance plan.

October 23: Devaney cancelled a bargaining session scheduled this date citing the need to collect the information requested by the Union on October 21.

October 27: The parties hold their fifth bargaining session. The Union provided its health insurance plan documents to Respondent. Respondent provided the Union with an updated list of jobs on which it was working. The Union reiterated its request for information about Kensington. Devaney told the Union he was looking into the matter.

Proposals and counter proposals had already been exchanged prior to this meeting. The Union asked Respondent if it had another counter proposal and it did not. The Union also asked Respondent for information on the jobs it had bid or planned to bid.

November 5: Attorney Devaney cancelled a bargaining session scheduled for 1:00 p.m. this day on the grounds that he needed the time to file an Answer to the General Counsel's October 22 Complaint. Devaney filed the Answer at 11:31 a.m. on November 5.

November 10: The parties hold their sixth bargaining session. Neither Devaney nor Respondent's Vice-President, Denise McCarthy, who had previously attended bargaining sessions, attended the November 10 session. Instead, Devaney's law partner, Jeffrey Wilson attended, presented the Union with a company counterproposal and told the Union he would take any questions it had back to Devaney and Respondent. This is the last bargaining session between the parties until March 10, 2009.[3] On November 10, the Union made additional requests regarding certified payroll records submitted by Respondent on prevailing wage jobs.

November 24: The Union filed a new charge alleging that Respondent violated that Act by failing to provide relevant information it had requested since October 21.

December 1: Devaney postponed or cancelled a bargaining session scheduled for December 4, pending receipt from the Union of specific details as to what information it believed it had requested and had not been provided. Sometime between December 1 and 4, Devaney

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[2] The General Counsel apparently agreed with Respondent that it was not obligated to provide bidding records to the Union.

[3] Attorney Devaney's wife gave birth to twins on February 16, 2009. Respondent cites her medical appointments and her being consigned to bed rest during her pregnancy as part of the reason for the absence of bargaining sessions during this period. Other reasons for the delay cited by Respondent are Devaney's heavy January 2009 trial schedule, arbitrations, other client matters and an absence of any sense of urgency regarding the Union's unit of eight employees.

scheduled a business trip to Washington, D.C.

December 3: John Canzano, the Union's attorney, responded to Devaney citing the bidding information and information regarding Kensington Construction as the basis for the latest charge. Canzano at two points in his letter asked Devaney for a list of additional dates on which Respondent would be available for bargaining. Devaney did not contact the Union with additional dates until February 18, 2009.

December 9: The Union filed an amended charge alleging that Respondent had failed to bargain in good faith by repeatedly cancelling bargaining sessions without justification, sending bargaining representatives who did not have authority to bargain to negotiations and other dilatory conduct.[4]

December 3-February 18, 2009: There was no contact between Respondent and the Union between these dates.

January 29, 2009: The General Counsel issued the Complaint in this matter setting a hearing date of March 18, 2009.

February 18, 2009: Attorney Devaney provided the Union with copies of certified payroll records requested on November 10, and proposed resuming collective bargaining on March 2 and 10. Devaney stated that the Union could not possibly have a good faith belief that McCarthy and Kensington were alter egos and that therefore the Union was not entitled to information about Kensington. Moreover, Devaney stated that Respondent did not have knowledge or information with respect to Kensington's current business and operations. As grounds for his position, Devaney cited a United States District Court decision denying summary judgment for the Cement Mason's Pension Trust Fund in a lawsuit against Respondent. This decision is discussed in greater detail below.

February 26: Union Attorney Canzano replied to Devaney, setting up a bargaining session for March 10.

March 10, 2009: The parties met as scheduled for their seventh bargaining session. The Union rejected an employer counter proposal and presented Respondent with another proposal.

March 17, 2009: Respondent provided the Union with additional certified payroll records.[5]

March 18, 2009: The instant hearing begins.

Kensington Construction Company

Eric Teichner, an employee and former son-in-law of Respondent's President Michael

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[4] The General Counsel's complaint does not allege that Respondent violated the Act by sending representatives without authority to bargain to bargaining sessions. It also does not allege that Respondent violated the Act by refusing to provide the Union information on the jobs it was bidding.

[5] Respondent cites the need to obtain these payroll records from a payroll service and problems with a former employee as a reason for the delay in providing such records.

McCarthy has done business as Kensington Construction Company. Kensington was established in 2003 or 2004, R. Exh. 4, Tr. 215. McCarthy Construction has been in business since 1958, R. Exh. 4. Kensington has had one or two employees besides Teichner in the past.[6] Kensington worked on a number of union worksites and paid union fringe benefits for its employees. However, the Union fringe benefit funds are suing Kensington for unpaid contributions it alleges are due.

All but two of the jobs Kensington performed were jobs it obtained from Respondent. Kensington never had a subcontract with Respondent. It merely provided union labor to McCarthy Construction.[7] Kensington does not and never owned any motorized equipment, such as power trowels for smoothing concrete. When Kensington worked for Respondent, it used Respondent's power equipment.

Kensington has or had a checking account. The funds in that account were managed by Pat Smalley, then an employee of Respondent. The records of Kensington Construction Company are maintained by McCarthy Construction personnel.

Analysis and Conclusions

The Union has not established the relevance of the requested information regarding Kensington Construction Company to its duties as collective bargaining representative; Respondent did not violate Section 8(a)(5) in failing and refusing to provide the information requested regarding Kensington.

When a union requests information relating to an alleged single-employer or alter-ego relationship, the union bears the burden of establishing the relevance of the requested information. *Reiss Viking*, 312 NLRB 622, 625 (1993); *Bentley-Jost Electric Corp.*, 283 NLRB 564, 568 (1987), citing *Walter N. Yoder & Sons*, 754 F.2d 531, 536 (4th Cir. 1985). A union cannot meet its burden based on a mere suspicion that an alter-ego or single-employer relationship exists; it must have an objective, factual basis for believing that the relationship exists. See *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987). Under current Board law, however, the union is not obligated to disclose those facts to the employer at the time of the information request. *Baldwin Shop 'N Save*, 314 NLRB 114, 121 (1994); *Corson & Gruman*, 278 NLRB 329, 333–334 fn. 3 (1986). Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had, at the relevant time, a reasonable belief.

If the Union had a reasonable objective basis for believing that an alter ego relationship exists between Respondent and Kensington Construction Company, it is entitled to the information it requested regarding Kensington, *Cannelton Industries,* 339 NLRB 996 (2003);[8]

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[6] Teichner did not draw a salary from Kensington. He was paid by Respondent for directing the work of Kensington employees. At least two of the other Kensington employees had worked for McCarthy in the past.

[7] A couple of other firms also supply union labor to McCarthy Construction. However, unlike Kensington these companies have their own equipment and their finances are not managed by McCarthy Construction employees. Unlike Kensington, only a small part of the business of these other entities involves furnishing labor to McCarthy.

[8] Current Board law does not require the Union to disclose, at the time of its information request, the facts which cause it to suspect an alter-ego or single employer relationship exists. The United States Court of Appeals for the Third Circuit, however, generally does require the Union to disclose sufficient facts to the employer at the time of any information request to

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Contract Flooring Systems, Inc., 344 NLRB No. 117 (2005); Z-Bro, Inc., 300 NLRB 87, 90 (1990).

However, the Union in this matter did not have a reasonable objective basis for believing that an alter ego relationship existed between Respondent and Kensington under the law of the United States Court of Appeals for the Sixth Circuit. Moreover, the Union has not established that it had such a reasonable belief pursuant to prevailing Board law.[9]

Respondent argues that the Union could not have a reasonable objective basis for its contention in light of a decision by Judge Rosen of the United States District Court for the Eastern District of Michigan, *Cement Masons Pension Trust Fund Detroit & Vicinity v. McCarthy,* 2006 WL 770444 (E. D. Mich. 2006), R. Exh. 4. Normally, a finding in a decision denying summary judgment, such as Judge Rosen's, would not have a preclusive effect in future litigation. However, Judge Rosen's decision rests on Sixth Circuit case law, *Trustees of the Resilient Floor Decorators Insurance Fund v. A & M Installations, Inc.,* 395 F.3d 244 (6th Cir. 2005), to wit: the alter ego doctrine cannot be applied in a situation where a nonunion company establishes a union company and no preexisting labor obligations are disrupted.

Neither the Union nor the General Counsel has articulated a theory under which the *Resilient Floor* case is not dispositive of the Union's claim that McCarthy and Kensington are alter egos. Therefore, I find that Respondent did not violate Section 8(a)(5) and (1) in refusing to provide the Union information regarding Kensington.

Respondent violated Section 8(a)(5) in unreasonably delaying its responses to the Union's June 17, 2008 information request.

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demonstrate its claim of relevance, *Hertz Corp. v. N.L.R.B,* 105 F. 3d 868 (3d Cir. 1997). However, the Court made clear that a union does not have to communicate the facts justifying its request in situations where the employer already is aware of such facts:

> In some situations, a union's reasons for suspecting that discrimination is occurring will be readily apparent. When it is clear that the employer should have known the reason for the union's request for information, a specific communication of the facts underlying the request may not be necessary. As the ALJ noted in this case, two of Hertz's managers testified that credibly that they had no idea why the Union believed that Hertz's hiring practices might be discriminatory until they arrived at the administrative hearing…
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> 105 F.3d at 874.

By contrast, Respondent was well aware that Kensington was owned by Eric Teichner, one of its employees, and that on some of its jobs, Teichner supervised both McCarthy and Kensington employees performing the same kind of work.

[9] *C.E.K. Industrial Mechanical Contractors,* 295 NLRB 635 (1989), a case in which the Board found an alter-ego relationship between a nonunion employer and a later-established union employer, is distinguishable on its facts. In that case, although the nonunion employer engaged in business prior to the incorporation of the union employer, the nonunion employer amended its certificate of incorporation after the union employer had entered into a collective bargaining agreement that allowed it to perform construction work. Thus, unlike the instant case, there was an inference that the nonunion employer amended its certificate of incorporation to avoid the obligations of the collective bargaining agreement.

An employer must respond to an information request in a timely manner. An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all, *American Signature Inc.,* 334 NLRB 880, 885 (2001).[10]

The Board recently summarized the standard that it employs in assessing a claim of unreasonable delay: In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information, *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enf. in pertinent part 349 F.3d 233 (4th Cir. 2005).

Applying this test to instant case, I find that Respondent violated Section 8(a)(5) and (1) in not providing much of the information requested on June 17, in a timely fashion. In *American Signature, supra,* the Board found a violation where the employer provided the information requested by the Union two and a half to three months after the request. In *Earthgrains, Co.,* 349 NLRB 389, 400 (2007), the Board found a violation where the employer responded four months after the request without explaining the delay.

Respondent has offered no explanation as to why it took three months to inform the Union as to what jobs it had underway or had been awarded. I find a violation with respect to the delay in providing this information in of itself.

Respondent contends that its delay in providing some of the other information requested was due to the fact that it had to obtain this information from its payroll service and due to the fact that an employee had embezzled funds from the company. However, it is vague as to what specific information these factors impacted. Respondent does not specifically contend, for example, that it was unable to provide the Union with the addresses of its employees earlier than September. It view of the impreciseness of the reasons given for the delay, I find Respondent in violation with respect to all the information that Respondent failed to provide until September 16.

Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act.

As the Union points out in its brief, between April 9, 2008 and March 10, 2009, Respondent cancelled or postponed 7 of the 15 scheduled bargaining sessions. As Respondent points out in its brief, that Board looks at the totality of a party's conduct in determining whether or not it has bargained in good faith under the Act, *Calex Corp.,* 322 NLRB 977 (1997).

The totality of Respondent's conduct: i.e., the number of cancellations and postponements, the lack of good cause particularly for the cancellations of the November 5, and December 4, sessions, the failure to provide the Union with additional bargaining dates for two and a half months following the Union's December 3, request and the failure to provide

[10] This case has also been cited under the name of *Amersig Graphics, Inc.*

information in a timely fashion lead me to conclude that Respondent did not bargain in good faith.

From the outset of negotiations, Respondent gave collective bargaining a very low priority and took a very lackadaisical attitude towards its obligations. This became even more pronounced beginning in October 2008. As a result of this attitude there were no sessions at which bargaining took place between October 27, 2008 and March 10, 2009.

There was no compelling reason for Respondent to cancel the November 5 session, since Respondent could have sought an extension of time in which to file its Answer to the General Counsel's Complaint, which was due that day. Moreover, Respondent filed its Answer an hour and a half before the bargaining session was scheduled to begin.

Similarly, there was no compelling reason for Respondent to cancel the December 4 session. Respondent has not shown why its uncertainty as to what information the Union desired could not have been resolved without cancelling the session. Moreover, it has not shown why its counsel's business trip to Washington on December 4 took priority over collective bargaining.

Most telling is Respondent's two and a half month failure to respond to the Union's December 3, 2008 request for additional bargaining dates. While its counsel cited his busy schedule and personal concerns for the delay, the "busy negotiator" assertion is not a valid excuse for Respondent's failure to meet at reasonable times.

> …it is well settled that an employer's chosen negotiator is its agent for the purposes of collective bargaining, and that if the negotiator causes delays in the negotiating process, the employer must bear the consequences.

Calex Corp, supra, at 978.

Thus, in looking at the totality of Respondent's conduct, I find that it violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act.[11]

Conclusions of Law

1. Respondent violated Section 8(a)(5) and (1) by failing to provide information requested by the Union, which was relevant to collective bargaining, in a timely fashion.

2. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to meet with the Union at reasonable times for the purpose of collective bargaining as required by

[11] *Suffield Academy,* 336 NLRB 659, 664-66 (2001), which is cited by Respondent, is easily distinguishable from the instant case. In that case the Judge found that the Employer had valid reasons for not meeting with the Union for a six-week period. However, in *Suffield Academy* the Employer was busy during that six weeks responding to the Union's information requests and accusations made by the Union that were not part of the bargaining process. In contrast, Respondent does not claim in the instant case that it was too busy responding to the Union to meet with it. Indeed, Respondent in this matter appears to have devoted very little time and effort to the Union or to the collective bargaining negotiations between October 27, 2008 and March 10, 2009.

Section 8(d) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Because Respondent failed to bargain in good faith for at least four months, the Union's certification year will be extended until at least 1 year after Respondent begins, or resumes bargaining in good faith, *Marc Jac Poultry Company,* 136 NLRB 785 (1962). Moreover, Respondent is ordered to bargain face-to-face, in good faith, not less than 24 hours per month, in daily sessions of between four and six hours, or upon another schedule mutually agreed to by the parties, until either a collective bargaining agreement or a good faith impasse is reached.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, McCarthy Construction Company, Walled Lake, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain in good faith at reasonable times for the purpose of collective bargaining as required by Section 8(d) of the Act.

(b) Unreasonably delaying providing information requested by the Union which is relevant for collective bargaining purposes.

(c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of all of Respondent's full-time and regular part-time employees working on building and construction projects at and out is its facility at 1033 Rig Street, Walled Lake, Michigan, concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Upon the Union's request, bargain collectively in good faith, within 15 days of this recommended Order, no less than 24 hours per month, in daily sessions of between four and six hours, or upon another schedule mutually agreed to by the parties, until either a collective bargaining agreement or a good faith impasse is reached.

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[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days after service by the Region, post at its Walled Lake, Michigan facility, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 17, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., May 27, 2009.

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Arthur J. Amchan
Administrative Law Judge

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT unreasonably delay or refuse to provide necessary and relevant information requested by the Union to perform its responsibilities as the exclusive collective bargaining representative of all our full-time and regular part time employees working on building and construction projects at and/or working out of our facility at 1033 Rig Street, Walled Lake, Michigan.

WE WILL not cancel bargaining sessions without just cause and without offering timely and reasonable alternative dates to the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union no less than 24 hours per month, in daily sessions of between four and six hours, or another mutually agreed upon schedule, and put in

writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit. We recognize that the Union's certification year has been extended for 12 months.

MCCARTHY CONSTRUCTION COMPANY

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Federal Building, Room 300
Detroit, Michigan 48226-2569
Hours: 8:15 a.m. to 4:45 p.m.
313-226-3200.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 313-226-3244.